

REPORT

Of the Committee of Claims, in the case of Henry Lee.

FEBRUARY 5, 1824.

Read: To lie on the table.

FEBRUARY 9, 1824.

Recommitted to Committee of Claims.

The Committee on Claims, to which was referred the petition of Henry Lee, having had the same, and the proof exhibited, under consideration, present the following

REPORT:

The material facts set forth in the petition, on which the petitioner asks relief, are the following, to wit: The petitioner was security for Lieutenant J. Ricaud, paymaster to the 36th regiment of United States' troops, commanded by Colonel Carbery; that said regiment was stationed, in August, 1813, at, or near Annapolis; that the non-commissioned officers, and privates, were discontented, not having received any part of their pay; that Lieut. Ricaud was sick, and unable to attend to any business; but who, at the solicitation of Colonel Carbery, gave a check on the bank at Annapolis, for two thousand dollars, which sum was received thereon by Colonel Carbery, and put into the hands of Lieut. Hobbs, to disburse, who paid it to the men. Ricaud was soon thereafter dismissed from his office, and Major Satterlee Clark, the district paymaster, was directed to pay off said regiment, and discharged that duty in Nov. 1813, without making any deduction for the payments made by Lieut. Hobbs, as the same did not appear from the muster rolls. It is alleged, that the advances made by Lieut. Hobbs, were known to Major Clark at the time he paid off said regiment; but that he did not consider he was authorized to withhold the amount, or any part of it, that appeared from the muster rolls to be due; and that the muster rolls were placed in his hands, as early as August, 1813, which gave him time to have ascertained to whom Lieut. Hobbs had made payment. The

petitioner further states, that a judgment was, sometime since, recovered against him, before the District Court of Virginia, by default; that he had employed counsel, to appear in his behalf before the Circuit Court, where he supposed the suit was pending, and that it was owing to such mistake that judgment was obtained, and expresses a belief, that, had he defended said suit, said judgment would not have been obtained. He alleges, that, soon after he became security for Ricaud, he went to the northward to superintend an important recruiting station, and has performed various services for the United States; that, at the last session of Congress, a law was passed for his relief, which authorized the accounting officers of the Treasury to pass to the credit of the account of said Ricaud such further sum, as might appear to be right and proper; but that the accounting officers have not deemed his case to furnish a ground for relief, and he prays the same may be granted by Congress. It being admitted by the petitioner, that the said sum of \$2,000 was properly charged by the Government to the account of Lieut. Ricaud, it becomes his duty, in order to obtain the relief he seeks, to shew, that Ricaud substantially performed his duty, or that the Government has not, nor will, suffer by his negligence.

The committee are of the opinion, that the House will sustain them in adopting the following, as a rule in this and all similar cases; if a public officer has been negligent in the discharge of an official duty, and a loss is to be sustained, either by the Government or the officer, in consequence of such negligence, that it shall be incurred by the latter, rather than by the former.

In the investigation of this case, the committee consider, that the security is entitled to no other decision than would be made if the principal was the applicant; and that, if Ricaud constituted an agent, he is responsible for the conduct of that agent.

By a letter, dated May 8th, 1823, addressed to R. B. Lee, signed by J. Thompson, chief clerk, it appears, that the non-commissioned officers and privates in said regiment, on the 31st of October, 1813, on which day it appears they were mustered, from the 31st day of May, 1813, were 561 men. If Lieut. Hobbs paid said regiment in August, 1813, it was at a time the troops were not mustered for payment.

Major Alexander Stuart testifies, that he was a major in the 36th regiment, in the summer of 1813; that the regiment was stationed at Annapolis; that paymaster John Ricaud was sick, and unable to do his duty; the non-commissioned officers and privates had not received any pay for some months, and were importunate on the subject. Colonel Henry Carbery, who commanded the regiment, insisted on the paymaster giving a check for two thousand dollars, in order that five dollars might be paid to each non-commissioned officer and private. He did; and the money was paid to the men, by Lieut. Hobbs, the brother-in-law of Col. Carbery.

The district paymaster, Satterlee Clark, gave a certificate, on the 8th of May, 1823, to the Third Auditor, of the tenor following:

“At the time I paid the 36th regiment, in November, 1813, several officers of that regiment were employed in collecting money from the men, for, and in the name of Mr. Ricaud. The money thus collected was for advances, which had been made by Col. Carbery, out of the sum received of Mr. Ricaud;” and afterwards, to the 1st interrogatory put by the agent of the petitioner, “What were the names of the officers who appeared to be employed in collecting from the men?” &c. He says, “Major Stewart appeared to be the principal agent of Lieut. Ricaud, in making collections from the men, who were paid at the encampment of the 36th regiment U. S. infantry, in the City of Washington. He was assisted by several officers, but I cannot at this time state positively who they were. It is my impression that Captains Merrick, Randolph, and Deneale, and Lieutenants Earle and Merrick were employed. Lieutenant Ricaud was present during a part of the time, but was indisposed. The company of Captain Hook was stationed, and paid, at Fort Washington. Captain Hook made the collections for his men, and as he informed me, for the benefit of Lieut. Ricaud.”

To other interrogatories, he states, in substance, that he does not know that any written authority was given to any of these agents; that he does not know how much money was received by such agents; that it was a case he did not consider that any interference by him was necessary or proper.

Major Stewart explicitly denies that he was the agent of Ricaud, or acted as such; that, although generally with the regiment, he never heard that any money was refunded, until he was so told by Mr. Clark, in 1816.

Joseph J. Merrick in substance, testifies, that he has no recollection of having had any written or oral authority from J. Ricaud, to collect back any money from the men of the 36th regiment, nor that he received any money; but, if he did, he paid it over to Ricaud. He thinks that some person was appointed to attend to Mr. Ricaud's collection; but does not remember, whether the money was retained by Major Clark for him, or paid to any other agent, and is not certain that it was paid at all; he remembers such a measure was talked of: he is confident that he was not the agent, or, if he was, the money was immediately paid over to Ricaud. Captain Joseph Hook is positive that he was not the agent of Ricaud, and that he did not receive any money on his account.

There is apparently a discrepancy between the testimony of Major Clark, and that of Major Stewart, Captains Merrick and Hooks. On this point, the Committee will only remark, that Major Clark testifies positively to the fact, that some persons were present, acting as the agents of Ricaud, and that they received money from the men at the time he was paying off the regiment; that Major Stewart appeared to be the principal, and that the others, above named, according to his impression, were assisting, &c. Major Stewart denying the fact of his acting as the agent of Ricaud, in *this particular* contradicts the testimony of Major Clark; but not in the other particu-

lar, that *other* persons were acting as Ricaud's agents, and making these collections for him. The same remark may be made in reference to the testimony of Captain Hook. And it should be borne in mind that Major Stewart and Captain Hook do not testify to the same fact; as the one was with a part of the troops, at Washington, and the other with another part of them, at Alexandria.

The testimony of Captain Merrick is unsatisfactory, and equivocal. He says he has no recollection of being the agent of Ricaud, or of having received any money from him, but if he did, he paid it over.

Major Clark has mentioned the names of four other officers, to wit: Captains Randolph and Deneale, and Lieutenants Earle and Merrick, whose testimony is not taken: they were at either one or the other stations, and would be able to affirm or disprove, satisfactorily, the testimony of Major Clark. As the petitioner appears to think it of importance to disprove the testimony of Major Clark, as it respects the agents of Ricaud; and as the Committee do not think that this evidence is outweighed, but at the most, left doubtful, by the testimony of Major Stewart, and Captain Hook, in the main, and most important point, to wit: was any money collected from the men, for the benefit of Ricaud?—they will examine the circumstances attending the transaction, with a view to incline the scale, admitting it is now equipoised, either one way or the other.

It appears from the statement of the Third Auditor, that Col. Carbery refunded to Paymaster General Brent, the sum of \$ 530 74, on account of Paymaster Ricaud; but he does not know whether any part of this sum was on account of the \$2,000; but there is no evidence that they were concerned in any other money transaction. In the absence of this proof, the Committee think they may safely infer, that the payment of the \$530 74, was to apply towards the \$2,000; that from the fact, that no receipts or vouchers were taken at the time the \$2,000 were disbursed, it was considered as a private transaction, in which the Government was in no wise concerned; and the presumption is almost irresistible, that either Col. Carbery, or Lieutenant Ricaud, would have taken measures to collect as much money, from those to whom they had made advances, as was within their power, at the earliest period that the soldiers were in funds; and it is not unreasonable to presume, that Col. Carbery would have been active in the business, in the weak state of Lieut. Ricaud's health, particularly as the money had been obtained at his solicitations. If any fact is proven by the testimony of Captain Merrick, it is that Lieut. Ricaud had an agent to make the collections, or that the constituting one, was talked of. If this money was disbursed on behalf of the Government, why appoint an agent to collect it from the soldiers, or talk of making such appointment? If the \$530 74 were not a part of such collections, from whence were they obtained? And how came this sum in the hands of Col. Carbery.

With this view of the case, the Committee are of the opinion that the circumstances corroborate the testimony of Major Clark, in this:

“That money was paid by the soldiers to the agents of Lieutenant Ricaud” leaving the question undecided, who were those agents, as also the amount received by them.

It appears from the petition, that the applicant partially rests his claim on the assumed fact, that it was within the power of Major Clark to have deducted the amount paid by Lieut. Hobbs, from the pay-rolls; and that the loss ought to be sustained by the Government, in consequence of this omission or neglect. That the misconduct or negligence of one agent or officer of the Government is not a justification or excuse for the misconduct or negligence of another agent or officer, is undeniably true; and this answer might be deemed sufficient to meet that part of the petition referred to; but the committee will examine this part of the case more minutely. There is no evidence as to the amount paid by Lt. Hobbs, to any one person. It is mentioned by Major Stewart, that the object of placing at the disposal of Col. Carbery \$2,000, was to pay each non-commissioned officer and private five dollars. The only data furnished the Committee, is the muster roll made out on the 31st of October; and the number of non-commissioned officers and privates, at that time, was five hundred and sixty-one. If payment was made to each one of them, it amounts to \$2805, but it is not pretended that more than \$2000 were paid. It follows, that the whole number were not paid, or that they received less than five dollars; and, in either case, it was the duty of Lieut. Ricaud to have given Major Clark notice who and what sums were paid, which was within his power, as he was present during a part of the time when the troops were receiving their pay. It is alleged, that the muster rolls were in the hands of Major Clark as early as August, and that he might have ascertained to whom payments were made. If the Third Auditor is correct in the statement made, that this regiment was mustered to the 31st of October, the petitioner, in this instance, must be mistaken; but the Committee are of the opinion that Major Clark was not bound to have taken notice of any payments not receipted by the men to whom they were made.

The Committee have given to this case the most attentive examination, both on account of the principles involved, and the rights of the petitioner; and they can view it in no other light, than as furnishing evidence of such neglect on the part of Lieut. Ricaud, or those into whose hands he placed the \$2000, and whom by that act he constituted his agents, as must necessarily subject him, and his securities, to sustain the loss; and therefore recommend the adoption of the following resolution.

Resolved, That the petitioner is not entitled to relief.

Second report of the Committee of Claims in the case of Henry Lee, made February 18, 1824.

The Committee on Claims, to which was recommitted the report of said Committee on the petition of Henry Lee, report the same without amendment.

The additional evidence only proves, that some of the persons named by Satterlee Clark were not collecting money for the benefit of Ricaud, as testified by said Clark; which, in the opinion of the Committee, is wholly immaterial, and so considered by them in the former report.

THE PETITION OF HENRY LEE.

The petitioner, Henry Lee, of the commonwealth of Virginia, a major in the 36th regiment of infantry, during the late war, begs leave respectfully to represent to the honorable Congress of the United States, that, when a law was passed at the last session, for his relief, directing the accounting officers of the Department of War, to re-examine the accounts of Lieutenant J. Ricaud, the first paymaster of the said regiment, for whom the petitioner was one of the sureties, and to pass to the credit of said Ricaud such further sums as might appear to be right and proper,—he did hope, that there would have been no further obstacle to his entire relief from the consequences of a judgment obtained against him by default in the District Court of the United States for the state of Virginia; which judgment was obtained in that manner, because the petitioner had no counsel there to defend his rights, having, through mistake, supposed that the suit had been brought to the Circuit Court of the United States for said state, where he had counsel in preparation to resist said demand; and where, he verily believes, his legal defence, as in many similar cases, would have entirely absolved him from the demand aforesaid, by the verdict of an independent jury. But, so it is, the said judgment by default remains in full force against him, inasmuch as the accounting officers of the Department of War do not consider themselves as authorized by the said act for the relief of your petitioner, in some particulars to depart from the rigorous regulations, and technical constructions of the said department in such cases: and more especially as to one item of credit claimed for said Ricaud, namely, the sum of \$2000, put into the hands of Colonel Henry Carbery, who commanded said regiment, for public use, by the said paymaster Ricaud, in August, 1813; and which was applied by him to such use. The particular circumstances attending this transaction are as follow: The 36th regiment was stationed at or near Annapolis, in August, 1813; and having received no pay for a long time, the non-commissioned officers and privates were in a discontented state; and paymaster Ricaud being dangerously ill, and incapable of executing his duties, Colonel Carbery insisted on his signing a check in his favor, on the Bank of Annapolis, to enable him to pay to the said non-commissioned officers and privates, five dollars each. Ricaud signed the check; Colonel Carbery received the money; placed it in the hands of Lieutenant Hobbs, his adjutant and brother-in-law, who paid it to the men. These facts are acknowledged by the accounting officers, and have never been denied by any person. In truth, the transaction was too notorious to ad-

mit of contradiction. It seems, that, soon after, from his illness rendering him unable to execute the duties of paymaster to the regiment, or from some other cause, Ricaud was removed from that post, and therefore lost all the authority over the officers and men, which his office had before conferred on him; and the duty of settling with and paying them was conferred on Major Satterlee Clark, district paymaster, who paid off the regiment in November, 1813. It so happened, that Lieutenant Hobbs had omitted to enter the payments made by him on the muster-rolls of the regiment; and though these payments were known by Major Clark to have been made, he did not, on account of this omission, deem it proper to estop in his hands, from the men, the money which had been so paid; though he seems to have had the muster-rolls of August, and might have ascertained to whom these payments had been made; therefore he paid the non-commissioned officers and privates as if they had received no payment in the August preceding. When Ricaud's accounts were settled in March 1816, this credit of \$2000, advanced to Col. Carbery, amongst many others, was claimed by him, and apparently rejected in the loose certificate of Major Clark, marked A, accompanying this petition, in which he states, when he paid off the regiment in November, 1813, that several of the officers were employed in collecting *from the men*, for Ricaud, the *advances* made by Colonel Carbery, in the August preceding. When further interrogated, by the agent of your petitioner, in the year 1823, who were these officers, he mentions Major Stuart as principal, Captain Merrick, Captain Hook, Captain Randolph, Captain Deneale, now dead, and Lieutenants Merrick and Earle. (See Major Clark's letter and answers, marked B.) Major Stuart, Captain Merrick, and Captain Hook, have made affidavits during the present month, totally contradicting this statement. Some of the other gentlemen have been long ago written to, and have not thought proper to notice the application; probably, because they think their honor insulted, in supposing them capable of aiding Ricaud in an attempt to practise a fraud on the United States. (See affidavits C, D, E.) Major Clark states, in his answers, above referred to, that he knows that some money was received, but he does not state how much, or by whom. It is probable, then, this money was retained by himself, and paid to Ricaud's agent; for he acquits Ricaud of having received any himself; and he does not know whether the persons who appeared to be collecting money for Ricaud, had any authority, written or oral, from him; but he supposes they had. If he paid any himself, he might have ascertained their authority to receive it: and if he estopped the money from any of the men, he might have estopped it from the whole; and might have held it in his hands as security for the United States against any delinquency of Ricaud. But, notwithstanding all these circumstances, the accounting officers have refused to pass to the credit of Ricaud these \$2000.

1st. Because Lieutenant Hobbs omitted to enter the payments to the men on the muster rolls, and Colonel Carbery neglected to see

this done; thus charging on Ricaud's surety the omissions of Colonel Carbery and his adjutant.

2d. As orally stated to the agent of your petitioner, because Ricaud had omitted to take the receipt of Colonel Carbery for this money—as if in effect and *in foro consciencill*, a check in favor of Colonel Carbery paid at Bank, and the money applied to the public object for which it was obtained, was not equivalent to any receipt.

And 3d. Because it is possible, from Major Clark's certificate, that the whole, or a part of this money, might have been returned to Ricaud by the non-commissioned officers and privates, after they had been paid off by Major Clark. This is very improbable; as Ricaud had no coercive power over the men to compel them to return it; and as to some it was impossible; as they had deserted, were dead, or sent to remote stations.

No person but Major Clark could have done this; and it must have been impossible for Ricaud's agents, without Major Clark's aid, to have got back the money, or any part of it.

For a full development of this case, your petitioner will now refer to the correspondence between Richard Bland Lee, Esq. his agent and friend, and Mr. Hagner, the Third Auditor, commencing on the 1st of September last—marked F.

The petitioner will now merely add, that, when it shall be found that this case is unique in kind, and that the like does not exist, and probably never will exist again; when the hardship of the circumstances attending it shall be considered: for, during the whole of the transaction, he was absent from the regiment, superintending an important recruiting station, and afterwards employed in the war in Canada, and therefore could take no measures for his safety; when it has been established that these two thousand dollars were received from an inferior officer by his commander for public use, and applied to the intended public use; when it might have been saved to the United States by Paymaster Clark, the agent of the Government; when there is no legal proof that any part of it has been received back by Ricaud; and even if it had been so received back, it was a fraud committed by Ricaud, *after he had ceased to be paymaster, and was therefore an act which ought not to be charged on the petitioner, who was only Ricaud's security while he was paymaster, and not for any acts after he ceased to be paymaster, and ought not, therefore, to be injured by any fraud or attempted fraud of his, subsequent to his removal from that office*; when, too, the Congress shall recollect in how many cases it has afforded relief on less cogent proofs and considerations, and lately in a very memorable instance, of a conspicuous and most meritorious public servant, it will be disposed to pass an act directing the proper accounting officers to pass to his credit, against the judgment obtained against him as surety for Ricaud, the before-mentioned two thousand dollars heretofore refused by them. All which is respectfully submitted.

January 26th, 1824.

N. B. Lieutenant Hobbs, Colonel Carbery, and Mr. Ricaud, have been long dead.

*STATEMENT of differences on settlement of Lieut. John Ricaud,
Paymaster to the 36th regiment of infantry.*

Balance due the United States, per official statement	\$6,218 62
Do. do. per his statement	- 2,332 32
Differences	<u>\$3,886 30</u>

Arising as follows:

Vr. 3. Captain Thos. Carbery, for his pay and subsistence from 21st March, 1813. It appears from the muster rolls that he was not appointed until the 25th. A difference of four days disallowed	\$7 56
8. Lieut. Chauncey, for his pay and subsistence. No receipt for amount of pay, &c.; the receipt given is only for \$18 40, the amount of his subsistence account; admitted in April, 1823	45 00
19. Lieut. Redman, for his pay and subsistence. Suspended. Receipt not filled up either with the amount, date, or from whom received. Admitted 23d Oct. 1821	97 42
37. Capt. C. C. Randolph's company. Payments to the following soldiers, not allowed for want of a witness to their marks to the receipt-roll, viz: Alex. Duggins, \$5; Z. Frazier, \$5 50; Saml. Walfield, \$5 50; Thos. Lovett, \$2; Jno. M'Anall, \$7; N. Moseley, \$5 50; Gerard Steel, \$3 25; John Smith, \$2 50; and Charles Talley, \$5 25. Amounting to, (except Saml. Warfield, admitted in April, 1823,)	41 50
38. Captain Thomas Corcoran's company. Payment to Thomas Corcoran, jun. as administrator of Lisbon Dove, for amount of pay due him, &c. Not allowed, there being no evidence of administration produced. Admitted 23d Oct. 1821	22 00
Payment to Thos. Angell, for 17 days more than he appears to have been mustered for	5 57
Payment to Benj. Bellehay, A. Dugger, and E. Triplett. Disallowed, for want of witnesses to their marks. Admitted in April, 1823	30 31

Carried forward

STATEMENT—Continued.

<i>Amount brought forward</i> -		
39.	Capt. Joseph Merrick's company. Suspended the payment to said company, for want of muster-rolls, &c. Admitted 23d Oct. 1821	370 69
40.	Capt. Thos. Carbery's company. Disallowed the payment to James Burns, a private of said company, from 12th April to 31st May, 1813, he not having been mustered. Admitted 23d Oct. 1821	12 94
65.	Surgeon Thos. P. Hall. Disallowed this sum, being an over calculation in his pay from 10th July to 31st Aug. 1813.	1 00
78.	Lieut. Wm. D. Merrick. His subsistence account suspended, for want of a certified account that the same is due, from 1st June to 31st Aug. 1813. Admitted 23d Oct. 1821	55 20
83.	Ensign George Johnson. His subsistence from 31st July to 31st Aug. 1813. Suspended; there being no certificate of the same being due. Admitted 23d Oct. 1821	14 60
79.	Overpaid to Lieut. Keener, for his pay, &c.	17
80.	Do. to Lieut. Wm. B. Carroll, for do.	14
86.	Col. H. Carbery. This sum charged as an advance made to him, on the affidavit of Major Stuart. Not allowed, for want of the Colonel's receipt for the same	2,000 00
37.	This sum charged as an advance to Colonel Henry Carbery, for which no receipt is produced. Presumed to be the part of the sum of \$530 74, passed to Lieut. Ricaud's credit, and deducted at the foot of this statement	500 00
88.	Ensign Wm. S. Wilkinson. Being so much paid him on account of his pay. Disallowed. The period for which he is entitled to pay not being stated. Admitted in April, 1823	60 62
89.	This sum charged as an advance to Captain Hall. Not allowed, for want of his receipt	200 00
90.	Ensign Edward Hopkins, for his subsistence, &c. Suspended; there being no certificate to the account of its correctness. Admitted 23d Oct. 1821	18 60

Carried forward -

STATEMENT—Continued.

<i>Amount brought forward</i>		
91.	Lieut. C. Queen, for his pay and subsistence. Disallowed, for want of receipt, \$51 pay, &c. for June, 1813. Admitted in April, 1823	86 60
92.	Lieut. John Ricaud, paymaster. This sum disallowed from his pay, subsistence, and forage; he having charged from 1st May, 1813, to 1st Oct. 1814, when he can only be allowed from 20th May, 1813, the date of his acceptance, to 31st Dec. 1813, the time allowed him to arrange and adjust his accounts. Admitted in April, 1823	772 12
<i>Contingent Account.</i>		
6.	Payment to John H. Beall, for rent of room for 8 months. Not allowed, for want of the usual certificates of occupancy. Suspended. Admitted in April, 1823	45 00
7.	Coulter and Page, for medicine, advice, and attendance, to Lieut. Ricaud, for 2 months. Not allowed, for want of a particular bill of medicine, &c. Admitted in April, 1823	30 00
		<u>\$4,417 04</u>
From which deduct this sum, passed off to his credit, being the amount deposited in bank by Colonel Henry Carbery, to the credit of Robert Brent, Paymaster U. S. Army, and not embraced in Lieut. Ricaud's statement; being \$30 74, more than the amount charged by him, per voucher 87.		530 74
Amount of difference		<u><u>\$3,886 30</u></u>

TREASURY DEPARTMENT,

Third Auditor's Office, Sept. 11, 1821.

True copy, taken from the original on file in this office.

PETER HAGNER, *Auditor.*

Remarks of the Third Auditor, on the following items, charged in the accounts of John Ricaud, late Paymaster of the 36th regiment United States Infantry, and heretofore deducted from his accounts, on settlement thereof, previous to the passage of the act of Congress, approved 3d March, 1823, entitled "An act for the relief of Henry Lee, one of the sureties of John Ricaud, late a paymaster in the service of the United States."

86.—This sum charged to Col. Henry Carbery, of said regiment. The only voucher produced in support of this charge, is, the affidavit of Major Alexander Stuart, by which it appears, that, whilst Mr. Ricaud was ill at Annapolis, in the month of August, 1813, he, at the solicitation of Col. Carbery, gave the colonel his check on the bank at Annapolis, for \$2,000, for the purpose of paying to each non-commissioned officer and private of said regiment, the sum of five dollars; and the payments were accordingly made, through Lieut Hobbs, of that regiment. If receipts were obtained from the men to whom the money was paid, they have not been furnished to this office. It appears, that all the companies of the 36th regiment were paid in November, 1813, by district paymaster Satterlee Clark, to include the 31st October, 1813. Upon the muster rolls on which Major Clark's payments were founded, no notice whatever is taken of the advances made the men in August (1813) preceding, and, of course, every man received from him his pay in full, up to the 31st October, 1813, without any deductions being made by him, on account of the advances in question. Indeed, it would appear from Major Clark's certificate, that it was a transaction of entirely a private nature, between paymaster Ricaud, and the officers and men of the 36th regiment infantry; for it is stated, that at the time the regiment was paid by him, in November, 1813, several of the officers were employed in collecting money from the men, for and in the name of Mr. Ricaud. The money thus collected, Major Clark's certificate states, was for advances which had been made by Col. Carbery, out of the sum received from Mr. Ricaud. It obviously appears, therefore, that Mr. Ricaud himself considered that the advances made the men in August, 1813, in the manner stated, were made on his account, and that the United States were in no wise interested in the transaction. It appears that Colonel Carbery refunded to Paymaster General Brent, the sum of \$530 74, on account of Paymaster Ricaud, but whether any part of this sum was on account of the \$2,000 in question, does not appear. Entertaining the foregoing views of the transaction in question, and having also ascertained that the regiment has been fully paid, independent of these \$2,000, the 3d Auditor is decidedly of opinion, that the \$2,000 which have been deducted from Mr. Ricaud's accounts, as before stated, cannot be allowed, under the act of the last session for the relief of Henry Lee, one of Ricaud's sureties. \$2,000

87.—This sum, charged as having been placed to his credit by Col. Carbery, at the War Department. Mr. Ricaud has received a credit for \$530 74, thus deposited, by Col. Carbe-

ry, with the paymaster General. This charge is therefore rejected.

500

89.—This sum, charged as paid to Captain Hall, per memorandum. No evidence whatever produced of the payment of the money. The charge is therefore rejected.

200

\$2,700

TREASURY DEPARTMENT,

Third Auditor's Office, 8th April, 1823.

Remarks of the Third Auditor, on the following items charged in the account of John Ricaud, late paymaster of the 36th regiment of the United States, and heretofore deducted from his account, on settlement thereof, previous to the passage of the act of Congress, approved 3d March, 1823, entitled "An act for the relief of Henry Lee, one of the sureties of John Ricaud, late a paymaster in the service of the United States."

3.	Capt. Thomas Carbery, for his pay and subsistence from 21st March, 1813. It appears from the muster rolls, that he was not appointed until the 25th. A difference of four days disallowed - - -	7 56
37.	Payment to Samuel Warfield, of Capt. Randolph's company. Suspended in consequence of his mark not being witnessed. On reference to the next payment to Capt. Randolph's company (see voucher 2, abstract D, S. Clark's accounts.) Samuel Warfield is found paid by him from the date of enlistment. Of course this charge is not admissible - - -	5 50
38.	Payment to Thomas Angell, of Capt. Corcoran's company, for 17 days previous to his enlistment. Not admissible - - -	5 57
65.	Errors in calculating the pay of surgeon Thomas P. Hall, from the 10th July to 31st August, 1813, having paid him this sum too much - - -	1 00
79.	Over payment to Lieut. Keener, on account of his pay, &c. - - -	17
80.	Over payment to Lieut. Wm. B. Carroll, on account of his pay, &c. - - -	14
86.	This sum charged to Col. Henry Carbery, of said regiment. The only voucher produced in support of this charge, is the affidavit of major Alexander Stuart, by which it appears that, whilst Mr. Ricaud was ill at Annapolis, in the month of August, 1813, he, at the solicitation of Colonel Carbery, gave the Colonel his check on the Bank at Annapolis, for \$2000, for the purpose of paying to each non-commissioned officer and private of said regiment the sum of five dollars, and that the payments were accordingly made through lieutenant Hobbs, of that regiment. If receipts were obtained from the men to whom the money	

REMARKS—Continued.

was paid, they have not been furnished to this office. It appears that all the companies of the 36th regiment, were paid in November, 1813, by district paymaster, Saterlee Clark, to include the 31st Oct. 1813. Upon the muster rolls on which major Clark's payments were founded, no notice whatever is taken of the advances made the men in August preceding, and, of course, every man received from him his pay in full, up to the 31st October, 1813, without any deductions being made by him on account of the advances in question. Indeed, it would appear from major Clark's certificate, that it was a transaction of entirely a private nature, between paymaster Ricaud, and the officers and men of the 36th regiment of infantry, for, it is stated that, at the time the regiment was paid by him in November, 1813, several of the officers were employed in collecting money from the men, for, and in the name of Mr. Ricaud. The money thus collected, major Clark's certificate states, was for advances which had been made by Col. Carbery, out of the sum received from Mr. Ricaud. It obviously appears, therefore, that Mr. Ricaud himself considered that the advances made the men in August, 1813, in the manner stated, were made on his account, and that the United States were in no wise interested in the transaction. It appears, that Col. Carbery refunded to paymaster general Brent, the sum of \$530 74, on account of paymaster Ricaud, but, whether any part of this sum was on account of the \$2000 in question, does not appear. Entertaining the foregoing views of the transaction in question, and having also ascertained that the regiment has been fully paid, independent of these \$2000, the Third Auditor is decidedly of opinion, that the \$2000 which have been deducted from Mr. Ricaud's accounts, as before stated, cannot be allowed under the act of the last session, for the relief of Henry Lee, one of Ricaud's sureties

2,000 00

REMARKS—Continued.

87.	This sum charged as having been placed to his credit by Col. Carbery, at the War Department. Mr. Ricaud has received a credit for \$530 74 cents, thus deposited by Col. Carbery, with the paymaster general. This charge is therefore rejected - -	500 00
89.	This sum charged as paid to Capt. Hall, per memorandum. No evidence whatever, produced, of the payment of the money. The charge is therefore rejected - -	200 00
91.	Charged for Lieut. C. I. Queen's pay, &c. for June and July, 1813. The only voucher produced in support of this charge, is a letter from R. Brent, paymaster general, requesting Mr. Ricaud to pay Lieut. Queen his pay for the month then due at the date of this letter. Lieut. Queen had been paid by Mr. Ricaud, to the 31st of May, 1813, and he was subsequently paid from the 1st of July, 1813, by S. Clark, (see vo. 43, abstract D, his accounts;) so that it is certain Mr. Ricaud only paid him in pursuance of Mr. Brent's letter, for the month of June, 1813, which has been admitted to his credit notwithstanding Lieut. Queen's receipt has not been produced - - -	35 60
Charges to this amount rejected - - -		<u>\$2,755 54</u>

B.

UTICA, August 27th, 1823

SIR: I have received your letters of the 16th June and 22d ult. and now transmit, herewith, copies of your interrogatories, and my answers thereto, which I have been prevented from doing at an earlier date, by absence and indisposition. Believing it to be my duty to furnish the accounting officers of the Treasury with all the information which I possess, in relation to the transaction to which your interrogatories refer, I send a duplicate of the enclosed to the Third Auditor.

I am, Sir, very respectfully,
Your obedient servant,
SAT. CLARK,
Paymaster United States Army.

RICHARD BLAND LEE, Esq.

At the time I paid the 36th Regiment, in November, 1813, several officers of that regiment were employed in collecting money from the men for and in the name of Mr. Ricaud. The money thus collected was for advances which had been made by Colonel Carbery, out of money put into his hands by Mr. Ricaud.

SAT. CLARK, D. P. M.

QUESTIONS.

1st. What were the names of the officers who appeared to be employed in collecting from the men the advances made by Colonel Carbery, out of money put into his hands by Mr. Ricaud?

Answer 1st. Major Alexander Stewart appeared to be the principal agent of Lieutenant Ricaud in making collections from the men who were paid at the encampment of the 36th Regiment United States Infantry, in the city of Washington. He was assisted by several officers, but I cannot, at this time, state positively who they were. It is my impression that Captains Merrick, Randolph, L. Deneale, and Lieutenants Earle and Merrick were employed. Lieutenant Ricaud was present during a part of the time, but was indisposed. The company of Captain Joseph Hook was stationed, and paid, at Fort Washington. Captain Hook made the collections from his men, and, as he informed me, for the benefit of Lieutenant Ricaud.

SAT. CLARK.

Question 2d. Did these officers shew any written authority from Mr. Ricaud to receive the same?

Answer 2d. They did not shew to me any written authority from Lieutenant Ricaud to collect money from the men. It was not necessary, for it was none of my business. I know that they acted,

or professed to act, under authority from him. As no notice was taken of the advances which had been made to the men, upon the muster rolls, they were paid by me as if no such advances had been made, and voluntarily returned to the agents of Lieutenant Ricaud the sums which they had received from Colonel Carbery. It was not a case in which my interference was either necessary or proper.

SAT. CLARK.

Question 3d. Did they, to your knowledge, receive any money from them, and how much?

Answer 3d. I know that they did receive money from the men, but I do not know how much.

SAT. CLARK.

Question 4th. When you paid off the regiment in November, 1813, how many non-commissioned officers and privates did it contain?

Answer 4th. Without referring to the rolls, which are now in the office of the Third Auditor, it is not possible for me to state the number of non-commissioned officers and privates in the regiment.

SAT. CLARK.

WASHINGTON, September 1, 1823.

DEAR SIR: Despairing to obtain from Major Satterlee Clark any information within the time limited by the act of Congress, which might lead to a more perfect elucidation of the propriety of the credit claimed by Mr. Ricaud, for the \$2,000 advanced by him to Col. Carbery for public use, I have determined to send to you, without further delay, my views of this item, that a final decision may be obtained on it, as soon as possible, from the accounting officers of the Department of War.

Permit me here to suggest to you, as this case has been referred to those officers by a special act of Congress, for the relief of Henry Lee, one of Ricaud's securities, and is strictly sui generis, whether, before you ultimately decide, it might not be just and proper to have a full conference with the Comptroller and Secretary of War, on its peculiar circumstances, which I have endeavored to reduce to a plain and condensed summary in the enclosed observations on your last report on Ricaud's accounts.

I am, with very sincere and great respect,

Your obedient servant,

RICHARD BLAND LEE.

PETER HAGNER, Esq.

Third Auditor.

WASHINGTON, *September 1, 1823.*

SIR: I have deferred replying to your letter of the 8th of May, in which you enclosed your last report on the accounts of the late Lieutenant Ricaud, late paymaster to the late 36th regiment of infantry, till I could obtain from Major Satterlee Clark an explanation of his certificate, without date, filed in your office, a copy of which you also sent to me at the same time. I have been disappointed in getting this explanation from Major Clark, though my first letter was addressed to him on the 16th June, and my second on the 22d July last; the first put into the post office with my own hand, directed to Utica, state of New York, and post paid; and the last containing a duplicate of the first, was franked by the Secretary of War, and put into the post office also by myself.

Major Clark not having thought it proper to acknowledge the receipt of either letter, and to comply with my reasonable request, I can account for his silence but on two grounds: first, that he does not choose to reply to my questions; or, second, because he cannot satisfactorily reply to them, and give the information asked.

Despairing, then, of obtaining any elucidation of his certificate from him, I am induced to call again your attention, at this time of comparative leisure in your office, to your last report on Ricaud's case, and to beg you to re-examine the same, after carefully weighing the reasons which I shall urge for reversing your decision as to the item of \$2,000, advanced by Ricaud to Colonel Carbery, and, by the latter, through Lieut. Hobbs, his adjutant, now deceased, paid to the non-commissioned officers and privates of the 36th regiment afore-said, in August, 1813.

In the first place, I beg leave to call your attention to copies of my two letters to Major Clark, of 16th June and 22d July last, above mentioned, and which accompany this communication; and, in the second place, to the following comments on your report, herein-before alluded to.

Your first reason in support of your decision, is, that, of the payments made to the men by Col. Carbery, in August, 1813, *no notice whatsoever* is taken on the muster rolls; and, of course, every man received from Major Clark, the new paymaster, his pay in full, from the 31st May to 31st October, 1813, without any deductions being made on account of the advances in question. Here permit me to observe, that, though no notice was taken on the muster rolls, Major Clark's certificate shews that he was not ignorant of the circumstance, and might have obtained the requisite information, either from Col. Carbery or Lieut. Hobbs, (who, it is believed, were both then alive, though since dead,) to have enabled him to have estopped the money in behalf of the United States. Further, from the illness of Ricaud, these payments were made by Lieut. Hobbs, by order of Col. Carbery, and it was their duty to make the necessary entries on the muster rolls. Lieut. Ricaud ought not, therefore, to be in-

jured by this omission of the commander of the regiment, and his agent.

2d. Your second reason is, that this was a private transaction between Ricaud and the officers and men of the 36th regiment. That such was the transaction, you infer from the certificate of Major Clark: for he does not state it as a *fact* in that certificate, therefore, your inference must be regarded as very remote, as Major Clark could not assert such a fact; being entirely unconnected with the regiment in August, 1813, and could personally know nothing about the transaction.

That it was not a private transaction between the officers and men of the 36th regiment, and Mr. Ricaud, is manifest from Maj. Stuart's affidavit, on file in your office. This is the substance of his affidavit: "Colonel Carbery, as commander of the regiment, applied to Mr. Ricaud, then ill, the paymaster, for money, to pay, in part, the arrears due to the non-commissioned officers and privates, say five dollars each, for which they were in great want, and clamorous. Col. Carbery received \$2,000, and actually applied it to that purpose." Was it possible to give any transaction more the face of a *public* transaction? A *public* officer, the commander of a regiment, receives from another *public* officer, a subaltern in that regiment, *public* money, and applies it to its proper *public* use. After Colonel Carbery had received the money from Ricaud, for *public* uses, and did apply it to those uses, as proved by Major Stewart, can it be just and proper that Ricaud should be charged with the money so applied; because, from his illness, it was personally impossible for him to make the payments himself, and to enter them on the muster rolls, which ought to have been done by Lieut. Hobbs, who was employed by Col. Carbery to perform that duty, and which Colonel Carbery ought to have seen was done?

But, in a conversation with me on this subject, you stated that the business would have been plain enough in favor of Ricaud, if he had taken a receipt from Col. Carbery.

I view this reason as partaking more of technical subtlety, and of nice official form, than as containing solid weight. Though Mr. Ricaud does not produce Col. Carbery's receipt in common form, what does he produce? He produces a copy of his check paid to Col. Carbery, and the affidavit of Major Stuart, the second in command, that the money so received was applied to the non-commissioned officers and privates of the 36th regiment. Since banks were established, a check paid at bank has always been regarded as a receipt in the most authentic form. Would any receipt which Col. Carbery could have given, have more fully shewn that he received the money; or would any receipt more fully shew the purpose for which he received, and the manner in which he applied, it to that purpose, than the affidavit referred to, of Major Stuart.

This is a body of proof which would satisfy any court or jury in our country. Your refusal to allow this credit I consider as resting merely on a technicality—because Ricaud, suffering under extreme

illness, did not take a receipt from Col. Carbery, in the exact form prescribed by the War Office.

In this peculiar case of Ricaud's security, the grounds taken by you are particularly oppressive. A judgment has been accidentally obtained by the United States, by default, against him. It is, therefore, now impossible to get before a court and jury, who would respect this evidence and relieve him. This circumstance ought to have considerable weight on the accounting officers of the War Department, to whom the subject was referred by a special act of Congress. And if Ricaud's security would have been relieved in a court of law, he ought to be relieved by the ministers of the nation.

In how many instances, too, has a total want of formal vouchers been supplied by oral and other circumstantial evidence? How many hundred thousands of dollars have been allowed by Government, for advances made for public use, on vouchers the most informal and irregular.

I shall therefore view it as a very great hardship, in this particular case of Ricaud, to which you cannot find a parallel on the records of your office, if an innocent security should be sacrificed to mere official technicalities.

3d. Your third reason is, that it appears from Major Clark's certificate, that several officers of the regiment attended for Ricaud, in November, 1813, when he paid it off, to receive from *the men* the advances made to them in the August previous—by Col. Carbery, *observe, not by Ricaud*.

Let me here observe, that this certificate is very loose. It does not state that they had any written authority from Ricaud: It does not state that they received any money, or, if any, how much.

It has been proved, that \$2000 were advanced by Ricaud to Col. Carbery, and this money paid by him to the non-commissioned officers and privates. This fact has never been denied by you; and you have no *legal* proof in your office, that any part was ever refunded to Ricaud. How could Ricaud compel the men to refund? He possessed no coercive power. But Major Clark might have estopped, for the United States, this money in his hands. Major Clark's certificate only affords the remote inference, that some of it might have been paid by the men to officers claiming for, not legally authorized to act for, Ricaud. Against this conclusion stands Ricaud's assertion. He has declared, by claiming this credit, that no part of the \$2000 has been refunded to him. He was an officer, as well as Major Clark, and therefore, officially, they stand on equal ground. Let me add too, that Major Clark, in neglecting to reply to my letters, declines giving any form or body to his certificate, by which the supposed repayments might be traced to any particular individuals.

4th. Your fourth reason is, that Col. Carbery refunded \$530 to the paymaster general, Brent, on account of Ricaud. This sum you seem to insinuate, might be part of the \$2000 advanced by Ricaud; and as Ricaud has had credit for these \$530, that if he were now allowed credit for the \$2000, he might obtain credit twice for the \$530.

This appears to be your belief, though you acknowledge that there is no proof of the fact. You will therefore, I am sure, be disposed to abandon this objection, when you reflect on the object for which the \$2000 were advanced to Col. Carbery; namely, to pay part of the arrears due to the non-commissioned officers and privates of the 36th regiment, say five dollars each; as it is fairly deducible from the muster rolls in your office, that there were at least four hundred such persons in that regiment, in the month of August, 1813, it containing five hundred and sixty-one on the 31st October following: and these four hundred would entirely have absorbed the \$2000; especially when Major Stewart's affidavit proves that this sum was obtained and solely applied to that object. Besides, it is most probable, that Col. Carbery applied for, and received, the exact sum which was called for by the exigency. It is then most likely that Mr. Ricaud had loaned five hundred dollars to Col. Carbery, which, as a soldier and man of honor, he returned with interest, by placing it in the hands of the paymaster general, at the request and to the credit of Ricaud: and that these \$530 had no relation to the official transaction touching the \$2000 intended for the non-commissioned officers and privates.

I am very sensible, that you have a delicate and responsible office to execute. But is it not possible, that, in some instances, oppressed with multifarious business, and always anxious, as is your duty, to protect the public interest, you may render injury to individuals, by overlooking some favorable circumstances, or not giving to them sufficient consideration?

In this case, particularly, it does appear to me, that you have not examined some facts with your usual attention, and have yielded to a more than ordinary degree of suspicion: and, therefore, have acted towards Ricaud's security with unexpected rigor. But, perhaps you are so bound by the fetters of official forms, that you have not the liberty of following the equitable convictions of your own mind: and in this case, though it is plain that this money has been applied to public uses, and though it is not proved that any part of it has ever been refunded—yet, as Ricaud drew a *check* in favor of Col. Carbery, instead of *taking his receipt*, you, on that mistake in form, feel yourself obliged to reject this credit.

If such shall be still your opinion, after considering what I have urged against it, you will, of course, adhere to your first decision. But pardon me for entreating you to re-examine the facts on which you decided, and to weigh, deliberately, the reasons now presented in support of a reversal of your opinion.

Where there are doubts, like a court and jury, ought not a public officer always to incline to the side of lenity and mercy? And, in this case, which party is most able to bear a loss evidently produced by the omission of Lieut. Hobbs and Col. Carbery to enter the payments on the muster rolls, and the further omission of Paymaster Clark, knowing these payments to have been made, to estop the amount in his hands; the United States or the unsuspecting security of Ricaud?

Further, by deferring for so many years the bringing of suit against the security, the United States have deprived him of the means of defending himself, as all the principal actors in the transaction are dead.

The foregoing statement and observations are respectfully submitted to your consideration. In the course of a few days I will personally wait upon you.

For and on behalf of Major Henry Lee, Ricaud's security.

RICHARD BLAND LEE.

PETER HAGNER, Esq.

Third Auditor.

WASHINGTON, September 6th, 1823.

SIR: Since my communications to you of the 1st inst. I yesterday received from Major Clark answers to the questions contained in my letter of the 16th June last, copies of which he has properly sent to you.

He has furnished in his answer to the first question, a list of the persons who *appeared* to be collecting money from the men for Mr. Ricaud, when he paid them off in November, 1813, but speaks uncertainly of all except Major Alexander Stuart and Capt. Joseph Hook.

Permit me to observe, that Major Clark seems to be entirely in a mistake as to Major Stuart, as Major Stuart would never have furnished the affidavit on file in your office, if he *had* been Ricaud's principal agent, having under him the other officers collecting money for him. Major Stuart, from his character and standing as a gentleman and an officer, could not, under a solemn oath, have aided Ricaud to obtain credit from the United States for money which he himself had received from the men for Ricaud. This would be imputing to him not only a connivance at, but the perpetration of, a direct and wilful fraud—a thing impossible, considering the employments held by him during the late war and since. As the other gentlemen are stated to have been employed under Major Stuart as sub-agents, the above observation will apply with equal force to them. Nor is there any thing to invalidate this inference, but Major Clark's reply to the third question, "that he knew that they did receive money, but he does not know *how much*."

I wish Major Clark had been more particular, and had designated the persons by name who received this money. Until that shall be done, I must insist that this answer is too vague to prove that *the whole or any considerable part* of the money was returned, even to *unauthorized persons*, for Ricaud, which had been advanced by him to Col. Carbery, and by Col. Carbery applied to the use of the United States. I also especially wish that Major Clark had stated whether any of this money had been, estopped in his hands, and by him paid

over to these officers. This seems to have been the only feasible, natural, and sure method to effect the object, as, in that case, he would not have paid over the money so estopped, without a full and legal authority, and would then have been enabled to state how much had been so returned, or nearly the amount.

In replying to the 2d question, Major Clark does not know that these officers had any written authority from Ricaud to collect this money (as certainly they possessed no coercive power,) and, therefore, he very properly observes, that any payments which might have been made, must have been *voluntary*. After Major Clark had paid the men, and the money was in their hands, it is certain that neither Ricaud nor his agents could have forced it from them. Major Clark, however, as he knew of the advances, and further knew that Ricaud was in debt to the Government, might have estopped it for the benefit of the United States.

I do not, therefore, think that this answer lessens the force of my reasoning on this point, addressed to you on the first instant. Knowing of these advances, Major Clark would have rendered a service to the United States, by estopping the money for them: or an act of kindness and justice to Ricaud, by enabling him to recover it by retaining it in his hands for his use; for, without such assistance from the paymaster, I do not see how injury could have been prevented to the United States or to Ricaud. And, in my humble opinion, public officers ought ever to act so as to subserve the purposes of justice, not only in relation to the Government, but so as to prevent injury, as far as possible, to individuals who may have transactions with it.

I will now add only one other view of the subject—that, having irresistibly established the advance of the money to Col. Carbery, and the payment of it to the non-commissioned officers and privates of the 36th regiment United States infantry, the onus probandi rests on the accounting officers of the Department of War, to show that this money has been in any manner returned, in *whole* or in *part*. And, if they shall be able to show that this has been done, I shall at once consent that so much as has been returned, shall be deducted from this item of credit claimed by Ricaud.

As the Department of War has more ready means of communicating with the officers referred to by Major Clark, (and were the case cognizable in a court of law, they would be required to produce this negative evidence,) I trust I shall not be deemed asking too much, in requesting you to send to each of them a copy of the annexed questions, and to urge him to forward to you, immediately, in the form of a certificate or affidavit, his answers.

Without such explanations, it will be impossible, in my opinion, for the accounting officers to decide with strict justice between the parties in the present case.

I remain, most respectfully, your obedient servant,

RICHARD BLAND LEE,

for Maj. H. LEE.

PETER HAGNER, Esq. *Third Auditor.*

N. B. Major Clark states that Lieut. Ricaud was present part of the time when he paid off the regiment, but he does not state that, to his knowledge, Ricaud endeavored to collect any money, or received one cent.

Form of the questions to be sent to the officers.

To Capt. MERRICK, Hagarstown, Md.

SIR: Major Clark, paymaster, having referred to you as one of the officers who collected for Lieut. Ricaud from the non-commissioned officers and privates of the 36th regiment United States' infantry, in November, 1813, when he paid off the regiment, in the City of Washington, the advances which had been made by Col. Carbery, in the August preceding, of five dollars each, out of money put into his hands by Lieut. Ricaud, be good enough to state, in the form of a certificate or affidavit, answers to the following questions:

1st. Whether you had a written authority, or any other, to receive such advances?

2d. Whether you did receive any part of such advances from the men, and how much?

3d. To whom did you pay the money so collected?

I am told Captain Hook resides in Baltimore. Capt. Randolph in Fauquier county. Virginia, Capt. Deneale is dead, Lieut. Merrick resides in Port Tobacco, Maryland, and Lieut. Earle on the Eastern Shore of that state, as does Maj. Stuart.

R. B. L.

WASHINGTON, June 16th, 1823.

SIR: One of the sureties of the late Lieutenant Ricaud, paymaster to the 36th Regiment of Infantry, employed in the late war, is in danger of paying a large sum for him to the Government, in consequence of a certificate from you, filed in the office of the Third Auditor, of which annexed is a copy.

You will oblige me to explain this certificate, by answering the questions also hereto annexed; and will confer, too, on me, and on the person for whom I act, a great favor by an immediate reply, returning your answers adjoined to the questions.

I am, with sentiments of very sincere and high respect,
Your obedient servant,

RICHARD BLAND LEE.

Copy of a Certificate.

At the time I paid the 36th Regiment, in November, 1823. several officers of that regiment were employed in collecting money from the men, for and in the name of Mr. Ricaud. The money thus collected

was for advances which had been made by Colonel Carbery, out of the sum received by Mr. Ricaud.

SATTERLEE CLARK, *D. P. M.*

QUESTIONS.

1st. What were the names of the officers who appeared to be employed in collecting from the men the advances made by Colonel Carbery, out of money put into his hands by Mr. Ricaud?

2d. Did these officers shew any written authority from Mr. Ricaud to receive the same?

3d. Did they, to your knowledge, receive any money from them, and how much?

4th. When you paid off the regiment, in November, 1813, how many non-commissioned officers and privates did it contain?

Major SATTERLEE CLARK.

WASHINGTON, *July 22d, 1823.*

SIR: Having waited for more than a month for a reply to my letter of the 16th June last, without hearing from you, I am induced to believe that it must have miscarried, as you could not hesitate to answer the questions therein propounded, as it is otherwise impossible for the suffering security of Mr. Ricaud to know the persons to whom he ought to apply to elucidate the transaction alluded to, or to obtain the reimbursement of any moneys received by them, on account of Mr. Ricaud. To ensure the certain delivery of this letter to you, I have shewn it to the Secretary of War, and obtained his frank for the transmission of it.

Permit me to add, that, unless I receive an immediate reply, your answer may come too late for the purposes of justice.

I remain, with very great regard,

Your obedient servant,

RICHARD B. LEE.

N. B. Annexed you will receive a duplicate of my letter of the 16th of June last.

Major SATTERLEE CLARK.

Utica, State of New York.

TREASURY DEPARTMENT,

Third Auditor's Office, 9th September, 1823.

SIR: Your letter of the 6th instant, has been received, and placed on file with the other papers recently received from you, on the same subject.

Although every disposition is felt to accommodate persons who have to account for public moneys at this office, yet, I should not consider myself warranted in complying with your request, by addressing the officers referred to in Major Clark's answers to your interrogatories, and propounding to them the questions attached to your letter of the 6th instant. It will be my duty, under the law, in Paymaster Ricaud's case, to audit his account for such credits as his sureties may prove themselves entitled to, by the best evidence which the nature of the case will admit of, and which it may be in their power to produce "within the time limited by said act."

I am, very respectfully,

Your most obedient servant,

PETER HAGNER, *Auditor.*

RICHARD B. LEE, Esq.
Washington, D. C.

WASHINGTON, January 27, 1824.

SIR: In addition to the documents in the case of Major Lee, now in possession of the Committee, I beg leave to send you the letter of the Third Auditor of the 23d instant, enclosing Major Alexander Stuart's affidavit of 1st March, 1816, and the certificate of the first teller of the Farmer's Bank of Annapolis, of the 2d April, 1823.

From the latter, it will appear, that Paymaster Ricaud's check, in favor of Colonel Carbery, or bearer, was paid at Bank on the 21st of August, 1813; and from the former, that this money was applied to the payment of five dollars each to the non-commissioned officers and privates of the 36th regiment of infantry soon after. These two papers only remained to complete the series of proofs necessary to establish, I trust, the justice of the prayer of the petition of Major Lee, recently submitted to the examination of the Committee.

I am, with sentiments of great respect and consideration,

Your obedient servant,

RICHARD BLAND LEE.

Hon. LEWIS WILLIAMS,
Chairman of the Committee of Claims.

Enclosed, also, is Lieutenant Earle's affidavit of 6th of January, 1824, not received when the petition was prepared. Lieutenant Mer-

rick has lately become a resident in this city, and can be personally examined. He too denies any sub-agency, as Major Clark ascribes to him.

TREASURY DEPARTMENT,
Third Auditor's Office, 26d January, 1824.

SIR: I have received your letter of the 22d instant, and, agreeably to your request, herewith enclose the original affidavit of Major Alexander Stuart, and Samuel Maynard's letter of the 2d of April, 1823, in relation to John Ricaud's check for \$2000.

I am, very respectfully,

Your most obedient servant,

PETER HAGNER, *Auditor.*

RICHARD B. LEE, Esq.
Washington City.

CITY OF WASHINGTON, *District of Columbia,*
March 1, 1816.

Personally appeared before me, one of the justices of the peace for the county of Washington, Alexander Stuart, late Major 36th regiment United States Infantry, and made oath on the Holy Evangelists of Almighty God, that, sometime in the month of August, 1813, the late 36th regiment U. S. Infantry, then being at Annapolis, Lieut. John Ricaud, late paymaster of said regiment, at the solicitation of Col. Henry Carbery, of said regiment, gave the said Col. Henry Carbery a check on the bank at Annapolis, for two thousand dollars, for the purpose of paying to each non-commissioned officer and private of said regiment, the sum of five dollars, and that the said sum of five dollars were paid to the said non-commissioned officers and privates, by Lieut. Hobbs, of said regiment, the aforesaid Lieut. Ricaud being, at the time, confined to his bed, by severe illness, and not able to attend to his duty as paymaster of said regiment.

ALEX. STUART,
Late Major 36th reg't.

Sworn to and subscribed, before me, this 1st March, 1816.

ROBERT BRENT,
Paymaster U. S. Army.

ANNAPOLIS, *April 2, 1823.*

DEAR SIR: In compliance with the request contained in your favor of the 29th ultimo, I beg leave to state, that a check drawn by John

Ricaud on the Farmers' Bank of Maryland, in favor of Col. Carbery, or bearer, for two thousand dollars, was paid on the 21st August, 1813, as appears from the books of the bank.

With great respect, I am,
Your most obedient,

SAM. MAYNARD,
Teller Farmers' Bank of Maryland.

R. B. LEE, Esq.

A.

At the time I paid the 36th regiment, in November, 1813, several officers of that regiment were employed in collecting money from the men, for and in the name of Mr. Ricaud. The money thus collected, was for advances which had been made by Col. Carbery, out of the sum received of Mr. Ricaud.

SAT. CLARK,
Deputy Paymaster.

TREASURY DEPARTMENT,
Third Auditor's Office, 8th May, 1823.

I certify that the foregoing is a true copy from the original on file in this office, with the accounts of John Ricaud, late paymaster of the 36th regiment infantry.

J. THOMPSON,
Chief Clerk.

February 13, 1824.

Mr. Merrick will oblige me by answering the following questions:

1. When Mr. Satterlee Clark paid off the 36th regiment of infantry, in November, 1813, at their cantonment in the city of Washington, were you employed in collecting money from the men, for and on account of John Ricaud, late paymaster of said regiment, or do you know of any other person being so employed?

2. If you received any money, be pleased to state how much, and to whom you paid it?

Mr. Merrick will please to make an affidavit to the answers which he may give to the above questions, before some justice of the peace of the city of Washington, and leave the same, with this paper, at his office, and I will call for it to-morrow. I hope it will not be inconvenient to him to attend to this request this evening or to-morrow morning.

His obedient servant,

R. B. LEE.

C.

WASHINGTON, 14th February 1824.

In answer to the above queries, I have to state, that, after the most serious and deliberate reflection, I find it impossible distinctly to call to my recollection the circumstances of the transaction to which they allude. I have a vague idea of something being said or done, by some of the officers, (when the regiment was paid off in the fall of 1813,) in relation to an advance previously made to the soldiers by Mr. Ricaud. Whether the amount of this advance was collected, by some third person, from the men, as they received their pay; whether there was merely a talk on the subject, or whether it was retained by the district paymaster, I am utterly unable to say. I should, however, rather incline to the latter opinion, but can be by no means certain. It was my habit, while in the service, from time to time, to make small advances to such men as I judged worthy of favor, and generally attended the paymaster's desk, when the troops were paid off, to collect these small loans; and from hence, it is probable, the idea may have arisen, that I was collecting money for Mr. Ricaud; for, certain I am, whatever course that business may have taken, that I had no agency in it whatever. My army concerns were all closed early in the year 1815, and the subject entirely dismissed from my mind. Other and very different pursuits have since occupied my thoughts, and, consequently, the impression left, at this distance of time, by a transaction which was not, even then, of much interest, must be weak and indistinct indeed.

WM. D. MERRICK.

14th February, 1824. Sworn to before

C. H. W. WHARTON, J. P.

F.

QUEEN ANN'S COUNTY, *Maryland*, ss.

Personally appeared before me, the subscriber, Chief Judge of the second Judicial District of Maryland, William N. Earle, of the county and state aforesaid, and late a Lieutenant in the 36th regiment of United States' Infantry, and made oath, on the Holy Evangelists of Almighty God, that, in the month of November, in the year 1813, when Major Satterlee Clark, district paymaster, paid off the 36th regiment of infantry, at their encampment in the city of Washington, he had no written authority from John Ricaud, late regimental paymaster, to receive from the men the advances made by Col. Carbery, in August preceding, having, at that time, no acquaintance with the said regimental paymaster. In witness whereof, I have hereunto set my hand, this 6th day of January, 1824.

P. S. EARLE.

D.

Question to Captain J. J. Merrick, late of the 36th regiment U. States' infantry.

When Major Satterlee Clark, District Paymaster, paid off the 36th regiment of infantry, at their cantonment, at Washington, in November, eighteen hundred and thirteen, (1813,) had you any written or oral authority from J. Ricaud, late Regimental Paymaster, to collect back the advances made by Colonel Carbery to the men of said regiment, in August preceding?

Answer. I have no recollection of having had any written or oral authority from the said J. Ricaud, to collect back from the men of the 36th regiment, the said advances; nor do I recollect having received or paid him any money on said account. I have no papers to refresh my recollection. I think that some person was appointed to attend to Mr. Ricaud's collection, but do not now remember whether the money was retained by Major Clark for him, or whether it was paid to any other agent; indeed, I am not certain, that it was paid at all—I remember it was talked of, and that some of those to whom an advance had been made, had deserted, some had died, and others had been sent away on detachment. I am confident, that I was not agent, at any time, to receive money for Mr. Ricaud, or that, if I was, the money was immediately paid over, having no memorandum or recollection of ever being indebted to Mr. Ricaud. It is possible, that a sight of the pay and receipt rolls, might enable me to recollect more clearly.

JOSEPH J. MERRICK.

STATE OF MARYLAND, }
Anne Arundel County, } ss.

Be it remembered, that, on this ninth day of January, in the year eighteen hundred and twenty-four, before me, the subscriber, a justice of the peace of the state aforesaid, in and for the county aforesaid, personally appears Joseph J. Merrick, the respondent, and being sworn on the Holy Evangely of Almighty God, deposeth and saith, that the statement contained in the foregoing answer, by him signed, is true, to the best of his recollection, knowledge, and belief.

Sworn before

JOS. MAYO.

STATE OF MARYLAND, }
Anne Arundel County, } ss.

I, William S. Green, Clerk of Anne Arundel County Court, do hereby certify, that Joseph Mayo, Esquire, by whom the accompanying affidavit appears to have been administered, was, at the

date thereof, a justice of the peace of the state aforesaid, in and for the county aforesaid, duly commissioned and sworn.

In testimony whereof, I hereunto set my hand, and affix my official seal, this ninth day of January, in the year eighteen hundred and twenty-four.

WM. S. GREEN,
Cl'k A. A. County Court.

E.

Questions addressed to Captain Joseph Hook, late of the 36th regiment United States' infantry, and his answers thereto.

1st. When Major Satterlee Clark, District Paymaster, paid off the 36th regiment of United States' infantry, in November, 1813, had you any written or oral authority from John Ricaud, late Regimental Paymaster, to receive from the men the advances made by Colonel Carbery, in August preceding?

Ans. I neither had any written nor oral authority to collect back those advances, nor did I ever hear of any other officers having had such authority.

2d. If you received any money, either on written or oral authority, how much did you receive, to whom did you pay it, or how otherwise apply it?

Ans. I did not receive any money on the said occasion, nor did I know of any having ever been received by any officer or person, as agent for Mr. Ricaud.

J. HOOK, J^R,
late Capt. 36th U. S. Infantry.

CITY OF BALTIMORE, ss.

Be it remembered, that, on this 12th day of January, in the year of our Lord eighteen hundred and twenty-four, the within named Joseph Hook, Jr., late Captain of the 36th regiment United States' infantry, appeared before me, the subscriber, one of the justices of the peace of the state of Maryland, for the city of Baltimore, and made oath on the Holy Evangely of Almighty God that the answers made to the foregoing questions, and subscribed to with his name, are just and true, to the best of his knowledge and belief:

DAVID B. FERGUSON.

STATE OF MARYLAND, }
Baltimore County, } ss.

I hereby certify, that David B. Ferguson, gentleman, before whom the foregoing deposition was made, and who hath thereto sub-

scribed his name, was, at the time of so doing, a justice of the peace in and for the city of Baltimore, duly commissioned and sworn.

In testimony whereof, I have hereto set my hand, and affixed the seal of Baltimore County Court, this thirteenth day of January, eighteen hundred and twenty-four.

WM. GIBSON,
Cl'k Baltimore County Court.

Major A. Stuart's Affidavit.

During the late war with Great Britain, Henry Lee, Esq. of Virginia, and myself, were majors in the 36th regiment of U. States' infantry. In the summer of 1813, the regiment was at Annapolis, Maryland; Paymaster Lieutenant John Ricaud was sick, and unable to do his duty. The non-commissioned officers and privates had not received any pay for some months, and were importunate on the subject. Colonel Henry Carbery, who commanded the regiment, insisted on the paymaster's giving a check for two thousand dollars, in order that five dollars might be paid to each non-commissioned officer and private. He did; and the money was paid to the men by Lieutenant Hobbs, the brother-in-law of Colonel Carbery. In 1816, when I was settling the accounts of Paymaster Ricaud, a Mr. Satterlee Clark stated that, at a time when he was paying said regiment, the company officers of said regiment received for Paymaster Ricaud the sum of five dollars from each non-commissioned officer and private, which they had respectively received of Lieutenant Hobbs, at Annapolis. Of this occurrence, although generally with the regiment, I have no recollection; nor did I ever hear of it, until said Clark made it known at the Paymaster-General's office. The statement he gives Mr. Lee, that I, "as Ricaud's agent," received it, is totally destitute of truth. I never had either written or verbal authority to do so, nor never did receive one cent.

The company officers of said 36th regiment were appointed by the field officers. These appointments were made generally in March and first of April. The Army Register did not make its appearance until June; and although a list of the officers, with the date of their appointments, was furnished the War Department by the field officers, yet their appointments were all carried in the Register, as being in June. Ricaud had monthly paid the officers, governed by the appointments they had from the field officers, the only data he had to go by. In the settlement of his accounts, all moneys he had paid previous to the date of their appointments, as appeared on the Army Register, was disallowed; although he had their accounts all regularly receipted. This sum, I think, amounted to between two and three thousand dollars; a reference to the accounts, in either the Auditor's office, or the Paymaster-General's office, will show the exact amount thus struck from his account. I do not precisely recollect; but think it about the sum above stated.

The check for the two thousand dollars advanced in Annapolis, I left with Ricaud's accounts in the Paymaster-General's office.

ALEXANDER STUART,

Late a Major in the U. S. 36th Regiment of Infantry.

Maryland, Somerset County, to wit:

Be it remembered, that, on this seventh day of January, in the year of our Lord eighteen hundred and twenty-four, personally appears Alexander Stuart, before me, the subscriber, and makes oath, on the Holy Evangelists of Almighty God, that the several facts and circumstances stated in the above writing are just and true, to the best of his knowledge and belief. So help me God.

Certified before

JOHN C. WILSON, Sen.
J. P. S. County.

Maryland, Somerset County, to wit:

I hereby certify, to all whom it doth or may concern, that John C. Wilson, Sen. Esq. before whom the above affidavit was made, and whose signature appears thereto, was, at the time of so doing, a Justice of the Peace of the State of Maryland for Somerset County; and that due faith and credit ought to be given to all his acts, as such, as well in Courts of Justice as thereout. In testimony whereof, I have hereto set my hand, and affixed the seal of Somerset County Court, this eighth day of January, 1824.

GEORGE HANDY,
Clerk of Somerset County Court.

TREASURY DEPARTMENT,

Third Auditor's Office, 8th May, 1823.

SIR: In reply to your letter of the 7th instant, I have to inform you, that a statement of all the credits claimed by John Ricaud, late paymaster of the 36th regiment infantry, and which were originally deducted, and finally rejected, under the late act of Congress, for the relief of Henry Lee, one of Ricaud's sureties, was forwarded to Major Lee, at Westmoreland Court House, Virginia, on the 26th ultimo, with the accounting officer's reasons, at length, for not admitting them under the late act of Congress. Major Lee will doubtless forward to you the statement alluded to, should he contemplate making further efforts to obtain a credit for any of the items in question.

Among the papers presented by Ricaud, and his sureties, there are no receipts of the non-commissioned officers and privates of the 36th regiment infantry, for payments in August, 1813. The companies of the regiment were only paid to the 31st of May, 1813, by Ricaud, according to the rolls rendered by him, as vouchers to his account.

There is no document on file, in this office, that shews, at one view, the number of non-commissioned officers and privates of the 36th regiment infantry, in August, 1813; but, presuming the musters of the regiment, to the 31st October, 1813, on which Major Clark's payments were made, from the 31st May, 1813, to that date, will answer any object for which the information sought by you can be wanted, I have ascertained the number of each company on the 31st October, 1813, which is as follows:

Capt. Charles C. Randolph's Company, non-commissioned					
officers and privates,	-	-	-	-	81
Capt. Thomas Carbery's	-	do.	-	do.	107
Capt. Jos. J. Merrick's	-	do.	-	do.	99
Capt. M. D. Hall's	-	do.	-	do.	61
Capt. Thomas Corcoran's	-	do.	-	do.	40
Capt. Samuel Raisin's	-	do.	-	do.	54
Capt. Joseph Hook's	-	do.	-	do.	119
Total number of non-commissioned officers and privates, on					<hr/>
the 31st October,	-	-	-	-	561

It will be recollected, that the foregoing number embraces all the recruits that were enlisted, and had joined the regiment, between the 31st May, and 31st October, 1813.

I enclose, agreeably to your request, Major Satterlee Clark's certificate, or statement, but it will be seen by the statement furnished Major Lee, that the \$2,000, to which the certificate has reference, was not wholly rejected on that certificate, as stated in your letter, but on other facts, equally strong, in connection with that certificate.

I am, very respectfully,

Your most obedient servant,

J. THOMPSON.

Chief Clerk.

R. B. LEE, Esq.

Washington, D. C.

WASHINGTON, December 19th, 1823.

SIR: In your letter of the 9th September last, having stated to me, that you did not consider yourself "warranted in complying with my request, by addressing the officers referred to in Major Clark's answers to my interrogatories, and propounding to them the questions stated in my letter," I have since in vain taken the most probable steps to accomplish this object by my own agency, and that of gentlemen who I supposed might be more successful. I have been at last informed by them, that these officers have been entirely silent, and that there is no prospect of their answering the questions which were propounded, which were as follow:

1st. When Major Satterlee Clark, District Paymaster, paid off the 36th Regiment of Infantry at their encampment, in the city of Washington, in November, 1813, had you any written authority from John Ricaud, late Regimental Paymaster, to receive from the men the advances made by Colonel Carbery, in August preceding?

2d. If you received any money, letter, or written or oral authority, how much did you receive, to whom did you pay it, or how otherwise apply it?

Why the officers alluded to have declined taking notice of these applications, it is not for me to say. Perhaps they considered them disrespectful and insulting, as implying an intimation that they were capable of joining in any plan with Ricaud to defraud the Government, and injure his securities, which every high-minded officer must regard as an insult.

Under these circumstances, I despair of obtaining any further information to elucidate a transaction, in which, the misfortune of Ricaud, (his illness) the neglect of the adjutant of the regiment whom Colonel Carbery employed to make the advances to the non-commissioned officers and privates, to enter these payments on the muster rolls, and the still greater neglect of Major Clark, the District Paymaster, when he knew of these advances, not to retain them in his hands, (especially as, from his official station, he could not have been ignorant that Ricaud was in debt to the United States, and had been dismissed from his post as Regimental Paymaster, for neglect of duty, incapacity, or misapplication of the public money) would have been converted into malfeasance, on the part of Ricaud, and made the grounds of charging one of his securities, the only solvent one, with the reimbursement to the United States, of \$2000, which, it is acknowledged by yourself, were received from Ricaud by Colonel Carbery, and by him, through his adjutant, applied in the manner above stated.

The only reasons on which you found a decision resulting in so much injury to an unsuspecting security, and so contrary to natural equity, are,

1st. That Ricaud, when he signed the check on the Bank of Annapolis for \$2000, (sick as he was) ought to have taken Colonel Carbery's receipt, as if a check paid at bank, and the money applied to public use, (which is not denied) was not equivalent to the most formal receipt?

2d. Because Colonel Carbery's adjutant did not enter the payments made to the men on the muster rolls; though it was notorious that the payments had been made, and though it is confessed that Major Clark knew that they had been made; and was in possession of the muster rolls of August, 1813, which would have enabled him to identify those to whom they had been made, and might very readily, when he paid the regiment, in November following, have retained the money which had been advanced at that time.

Here permit me to observe, that the principal design of having such payments entered on the muster rolls, is probably, that these

may be a guide to any future paymaster: but, if this object, in any particular case, as in that now under consideration, has been attained, so that all the information which such entries could have given, were before Major Clark, this intention in effect was fulfilled; as he knew, from other sources, that five dollars had been paid to each of the non-commissioned officers and privates of the 36th Regiment of Infantry, in August, 1813, and the muster rolls of that month shewed who these non-commissioned officers and privates were.

Nothing, then, could have been more easy, than for Major Clark to have estopped five dollars from each of these men, for the advances which had been made; and nothing would have been more just to the United States, and to Ricaud's securities. But, though Major Clark knew of these payments, he says that it was not his duty to look at any thing but the muster rolls. This is really sacrificing substance to form. The whole transaction, from the beginning, being regarded as informal and irregular, informality and irregularity might and ought to have been continued to the end, for the attainment of justice to the United States, and to Ricaud's securities.

3d. Ricaud had agents, who received the advances made to the men by Colonel Carbery, when Major Clark paid off the regiment in November, 1813.

But what is the substance of Major Clark's testimony? That Major Stuart, with several officers, were engaged in receiving for Ricaud, while he was paying off the men the advances made by Colonel Carbery: but he does not know that any of them were authorized by Ricaud, in writing, or verbally, so to act: he *supposes* they were. He says, he knows that some money was received by them, but not how much: nor does he state by whom. It is probable, then, that this money passed from his own hands to them: an evidence of the ease with which he might have retained the whole.

As to Major Stuart, Major Clark must be entirely under a misapprehension: as it is impossible that Major Stuart, if he had collected this money, either himself, or through his inferior officers, could have made the affidavit filed in your office, to enable Ricaud to obtain credit for the \$2000. Here I might repeat, that I have been unable to obtain any information from the officers referred to by Major Clark. Therefore, through them, no fact is established, leading to the conviction that Ricaud received back, in any manner, the whole of the \$2000, or any part thereof.

The principal error seems to attach to Major Clark: an error, no doubt, proceeding from a mistaken estimate of his duty, or an over scrupulous and delicate feeling towards the late paymaster, common to officers of every army. However Major Clark may be excused on these grounds, and far be it from me to insinuate aught against an officer so meritorious, and so much confided in, I trust that you will, on a revision of this case, be of opinion, that his error, and the omissions of Colonel Carbery and his adjutant, ought not to be charged on one of Ricaud's securities, especially as the Government neglected, for so many years, to call upon

him, until Lieutenant Hobbs, the adjutant, Ricaud himself, and Colonel Carbery, were dead.

You stated to me, verbally, that Colonel Carbery's receipt would have exonerated Ricaud. What then would have been the result to the United States? Colonel Carbery has died insolvent, in debt to the United States. This sum, then, like the balance now due from him, would have been lost. But you seem to think, that this sum may yet be saved to the United States, by adhering rigidly to forms, and overlooking the claims of substantial justice: and thus obliging a security to pay it, who, from the delay of the Government, must have expected never to have been called upon.

Your decision, by resting it on *form* and *etiquette*, by some may be held to be *right*, though, *in foro consciencie*, it is manifestly wrong, and unworthy of a *rich and powerful sovereign, settling accounts with his subjects*. It verifies the axiom of Jefferson, "that those who feel power are sometimes apt to forget right."

In this human life, it is sufficient that every individual bear his own sins, without being saddled with those of an hundred others.

Especially at this time, after Congress has passed so many acts directing accounts to be settled on principles of equity and justice, and thus relieved many meritorious and suffering citizens, and their families, from ruin, I trust you will not deem it just, on a review of this case, to make Maj. Lee the victim of the errors of others, which he could not prevent by his personal attention, as he was employed, at the time of these transactions, at a distance from the regiment, executing, beneficially, an important trust, confided to him in the line of his duty.

I might urge other arguments, but I have stated enough, and will now close, with the request of an immediate and final decision on a case so often before you; if against Major Lee, I apprise you that I shall appeal to the Comptroller; if he unite with you, then to Cæsar; and, if the Congress shall not find equity enough in his case to relieve him, after interposing their clemency so often to save others, who perhaps did not deserve more their interference, he must submit, and regret that he is less favored.

But I trust that the accounting officers of the Department of War, after a full and impartial examination of all the matters which have been submitted by me, will not reduce Major Lee to the necessity of making this last appeal; especially when they reflect that, had a court and jury the power to decide, he might expect certain relief. But, of the chance of such relief, by his mistake of the court in which he was sued, he has been deprived, and is not now permitted to avail himself.

On Wednesday next I will wait on the Comptroller and yourself, at the War Office, to make any oral explanations which may be deemed necessary, and to receive your final decision.

I am, with very great consideration and respect,

Your obedient servant,

RICHARD BLAND LEE.

PETER HAGNER, Esq.

Third Auditor.

WASHINGTON, *December 30, 1823.*

SIR: The Third Auditor having communicated to me his last report, of the 24th instant, against the allowance of \$2,000, a credit claimed by Major Lee, one of the sureties of John Ricaud, late paymaster of the 36th infantry, in which he rejects the said further credit, for reasons, in my opinion, not sustained by law, by fact, or the principles of common justice between man and man; and, more especially, between a sovereign and subject; I am bound, as the agent of Major Lee, to request you seriously to revise the decision, and to examine my letters of the 1st and 6th of September last, and Major Satterlee Clark's answers to certain questions put to him by me, and my further comment on the same, contained in my letter of the 19th instant; and also, two other important documents, Major Alexander Stuart's affidavit, and the certificate of the cashier of the Bank of Annapolis, the last proving the payment of the two thousand dollars to Col. H. Carbery, and the affidavit the application of it to the payment of the non commissioned officers and privates of the before mentioned regiment, in August, 1813.

On a careful view of these papers, I confidently hope that you will reverse the decision of the Third Auditor, and direct the said \$2000 to be carried to the credit of Paymaster Ricaud.

These facts are conspicuous, that the two thousand dollars were received by Colonel Carbery, the commander of the regiment, from the Bank of Annapolis, on the check of Ricaud, for the use (a public use) to which it was applied; that Major Clark, when he paid off the regiment, in November, 1813, knew of these advances made by Colonel Carbery; that he had the muster rolls of August, 1813, and though Col. Carbery omitted to enter the payments on them, Major Clark could readily have ascertained to whom they had been made, and might have withheld them, and ought to have done so, as Ricaud had been superseded, and was in debt to the United States; that the officers, who, he states, were collecting money from the men on account of these advances, had no written authority from Ricaud, and possessed no compulsive power to force the money from the men, as had Paymaster Clark, who, having the money in his hands, might have retained it; and lastly, that if these officers possessed authority from Ricaud, which does not appear, to receive these advances, it was a fraudulent attempt to defeat a payment already made out of the public money, and to apply it from a public to a private use, which ought to have been prevented by Paymaster Clark, especially as he was district paymaster, and held a grade superior to Ricaud, and might have done it.

I do hope that you will not think it right to charge the omissions of Col. Carbery, his adjutant, Lieut. Hobbs, and Major Clark, as defaults on the part of the surety; and, more especially, any attempt of Ricaud, after he was no longer in office, to commit a fraud: even if such an attempt had been made, which is not proved satisfactorily;

and in my opinion was not possible, because it is stated to have been done through the agency of honorable officers of the regiment; and particularly Major Stuart, after so acting, could never have made the affidavit before referred to.

I am, respectfully, your obedient servant,

R. B. LEE,
for Major Lee.

RICHARD CUTTS, Esq.
Second Comptroller.

January 15, 1824.

DEAR SIR: I sincerely hope you have decided in favor of the credit claimed by me in Ricaud's case.

1st. Because the money was actually put into the hands of Col. Carbery, and by his adjutant paid to the men.

2d. Because there is no legal proof that any of this money was returned to Ricaud.

3d. Because Major Clark, the district paymaster, knew of this payment, and might have estopped the money in his hands, when he afterwards paid off the regiment.

4th. That Ricaud, being deprived of his office of regimental paymaster, had no power of getting the money back from the men.

5th. That, if he attempted it, it was a fraudulent act, which Major Clark ought to have prevented.

6th. Because the money could not be forced from the men by Ricaud, without the assistance of Major Clark.

When so many claims have been allowed on more slender proofs, and less substantial grounds, I hope you will allow this; and relieve a suffering individual from distress and ruin.

Your obedient servant,

R. B. LEE.

RICHARD CUTTS, Esq.
Second Comptroller.

TREASURY DEPARTMENT,
Third Auditor's Office, December 27, 1823.

SIR: Your letters, of the 1st and 6th of September, and 19th instant, have been duly considered, with the accompanying papers, and a report made to the Second Comptroller thereon, in relation to the account of John Ricaud, late paymaster of the 36th regiment of infantry, for his decision; a copy of which I enclose for your information.

Respectfully, Your obedient servant,

PETER HAGNER, *Auditor.*

R. B. LEE, Esq.
Washington.

TREASURY DEPARTMENT,
Third Auditor's Office, December 24, 1823.

SIR: I transmit, herewith, three communications, received from Richard Bland Lee, Esq. (dated 1st and 6th of September, and 19th of December, 1823,) on behalf of Major Henry Lee, one of the sureties of John Ricaud, late paymaster of the 36th infantry, which, it will be perceived, are intended to induce the accounting officers to reverse their decision, in relation to an item of \$2000, advanced Col. Carbery, by Paymaster Ricaud, in August, 1813, for the purpose of advancing to each of the non-commissioned officers and privates of said regiment, the sum of five dollars; and which sum of \$2000, was originally disallowed, from said Ricaud's accounts, and was not considered admissible, when the accounting officers adjusted his accounts, in April last, under the provisions of the act of the 3d of March last, entitled, "An act for the relief of Henry Lee, one of the sureties of John Ricaud, late a paymaster in the service of the United States."

The only evidence produced, since the settlement in April last, are, the answers of Major Satterlee Clark, to certain interrogatories propounded to him by Richard B. Lee, Esq. in relation to the \$2000 in question; and which, so far from showing that Mr. Ricaud's account is entitled to credit for the same, strengthens my opinion, that no further credit can be passed to his account, under the law of the last session.

Respectfully, your obedient servant,
PETER HAGNER, Auditor.

RICHARD CUTTS, Esq.
Washington City.

TREASURY DEPARTMENT,
Third Auditor's Office, 19th January, 1824.

SIR: On the 17th instant, I received a letter from the Second Comptroller of the Treasury, announcing his decision, adverse to the claim of Henry Lee, one of the sureties of John Ricaud, late paymaster of the 36th regiment of United States infantry; the papers in relation to which were, with my decision thereon, reported to him on the 24th ultimo. I, therefore, agreeably to your memorandum of the 7th instant, enclose herewith the following documents:

1. Statements of differences and notes, on the first settlement of John Ricaud's accounts.

2. Third Auditor's remarks on three items, that were originally deducted from Mr. Ricaud's accounts, and which the accounting officers decided, in April last, were not admissible, under the act passed at the last session of Congress, for Major Henry Lee's relief.

3. In lieu of copies, I enclose all your original letters, from and after the 1st of September last, which you will return to the files of this office, when you shall have done with them.

My letter of the 24th December last, to the Second Comptroller, a copy of which I enclosed to you on the 27th ultimo, embraces my last decision on Mr. Ricaud's accounts.

Having heretofore furnished a copy of Major Clark's certificate, and its appearing, from his letter to me, that he forwarded to you, his original answers to the questions propounded to him by you, I decline making copies of those documents, on file in this office, presuming you will find the copy and originals referred to, in your possession.

I am, very respectfully,

Your most obedient servant,

PETER HAGNER, *Auditor.*

RICHARD BLAND LEE, Esq.
Washington City.

List of original letters referred to in, and transmitted with, this communication.

Richard B. Lee,	to Peter Hagner,	dated 1st September,	1823.
do.	- to do.	- 1st do.	
do.	- to do.	- 6th do.	
do.	- to do.	- 19th December,	1823.
do.	- to S. Clark,	- 16th June,	
do.	- to do.	- 22d July,	
do.	- to Richard Cutts,	30th December,	
do.	- to do.	- 15th January,	1824.
H. Lee,	- to Wm. Lee Ball,	30th December,	1823.

RICHMOND, Nov. 9, 1821.

SIR: Your letter, of the 6th instant, and the packet it was enclosed in, came to hand this morning. I shall attend to the two suits you are involved in, in the Federal Court. As to fees, the \$100 you have sent me your note for, is the usual, and a sufficient compensation for the service; and I have this further to add, that I never desire any man to sacrifice his property, much more to sacrifice any good feeling, in order to get the means of paying me a fee.

I cannot defend these suits upon the papers you have sent me. I shall have to ask a continuance. The most important item is that which depends on Major Stuart's evidence; and his affidavit cannot be read without Mr. Stanard's consent. We shall have to take his deposition. Where is he?

Upon the other case, I will send you my opinion when I get a little leisure to consider it; and then, any body who sees the opinion can draw such a bill as I should prepare.

I remain, with respect, (in haste,)

Your obedient servant,

B. W. LEIGH.

HENRY LEE, Esq. *Stratford.*

RICHMOND, Dec. 16, 1821.

SIR: I have received your last letter, post marked December 4th. I should have anticipated it, but we were all so occupied in the General Court, that we did not even get into the Federal Court for the first sixteen days of the term.

The suit against you was not in the Circuit Court, but in the District Court of the United States, which sat in October; and the judgment had been rendered, and the Court had adjourned, sometime before I received your letter on the subject. I own I do not see how relief is now to be obtained by any effort of mine. The Circuit Court, sitting in Chancery, will not enjoin the judgment, and order a new trial, unless some good reason can be shown, sworn to by yourself, and proved by witnesses, why you did not defend yourself at law in the proper court.

I remain, with respect,

Your obedient servant,

B. W. LEIGH.

HENRY LEE, Esq. *Westmoreland Court-house.*

Case of Major H. Lee, one of the sureties of John Ricaud, paymaster to the 36th regiment of United States' infantry, in August, 1813.

It appears, from the regulations adopted for the conduct of the Paymasters of the army, that the month of August was one of the months in which each regiment should be paid, and so on in every second month.

It appears, that, in August, 1813, Paymaster Ricaud being unable, from extreme illness, to perform the duty of paying the said regiment, Col. Carbery urged on him that he should sign a check on the Bank of Annapolis, in or near which the said regiment was then cantoned, for 2,000 dollars, to enable him to pay to each non-commissioned officer and soldier the sum of five dollars each.

It appears that John Ricaud signed a check for that sum, in favor of Col. Carbery, on said Bank, which was duly paid, and applied to that object, through the agency of the adjutant of said regiment, Lieut. Hobbs, now deceased. These facts were not denied by the accounting officers of the War Department, being too notorious, and fully proved.

It appears that Ricaud, as will be seen by reference to the first table of differences, furnished by the Third Auditor, remained ill; and from the district paymaster being directed to pay off the regiment, on the 31st Oct. of that year, that he continued too ill to perform that duty, and might, on that account, have been dismissed from office, or from neglect of duty. It is certain, that his powers as Paymaster of the regiment had ceased before Major Clark paid it in Nov. 1813; therefore, at that time, as an officer, he had not any coercive means of compelling the non-commissioned officers and privates to account for, or return, the money so advanced to them.

It appears that monthly returns of the regiment are required to be made to the Paymaster, to enable him to ascertain what requisition it would be necessary for him to make on the Paymaster General for funds to pay the regiment at the fixed periods—once in two months.

It is, therefore, probable, that such returns were in the possession of Major Clark when he paid off the regiment, in November, 1813, for the month of August; and, being so in his possession, he could have readily ascertained the names of the men who had been mustered in that month, and have estopped the advance which had been made to them in said month; and the only reason why he did not do this, which is assigned, is, that it *was no part of his duty*. As Colonel Carbery, or his agent, Lieut. Hobbs, had omitted to enter these payments on the muster-rolls of August, it may here be observed, the intention of entering the payments on the muster-rolls must be to enable a subsequent paymaster to ascertain what had been previously paid. But, when it was known that five dollars had been paid to each of the non commissioned officers and privates in August, and the muster-rolls were accessible to the paymaster who paid the regiment in November following, it is plain that the facts intended to be communicated by entries on the muster-rolls might readily have been supplied in another and easy mode; and the neglect of Col. Carbery, the commander of the regiment, and of Lieut. Hobbs, his adjutant, in not making the entries on the muster-rolls, it does not appear that Ricaud acted as paymaster after the month of August.

It appears that the statements made by Major Clark, as to the persons who appeared to be collecting money for Ricaud, when he paid off the regiment in November, 1813, for, and on account of, advances made by Col. Carbery, not by Ricaud, in August, are entirely contradicted by Major Stuart, Captain Hook, Lieut. Earle, and Lieut. Merrick; and that the evidence of Captain Merrick, though not so express, leads to the same result. Captain Merrick states an important fact, not stated by the others: that, between August and November, some of the men had died, some deserted, and some removed to distant stations. This latter circumstance may account for the difference, in number, in the regiment, when it was paid off in November, from its number in August, when Col. Carbery applied for 2,000 dollars, to give each of the non-commissioned officers and privates five dollars. In making this requisition, the Colonel must have known the exact number of men under his command at Annapolis, and asked only for the sum necessary to give them five dollars each. Besides, recruits were coming in from the recruiting station, which may account for the regiment containing 561 men in November, when, in August, at Annapolis, only 400 were paid.

The evidence produced is from five out of the seven persons named by Major Clark; of the other two, Capt. Deneale died immediately after the close of the war, and Capt. Randolph, though written to, has either not received the letter, or declines answering.

It is to be observed, that this money could not be readily obtained back from the men, unless it had been retained in the hands of Pay-

master Clark. This is the express opinion of Lieut. Merrick; and when Major Clark observes that he knows that some money was collected, but not how much, it is probable that he *knows* this fact from having estopped it in his own hands, and paid it over to Ricaud's agent; for he does not insinuate that Ricaud himself received any money. If he paid any money, so retained, to any agent of Ricaud, he, probably, might recollect the name of such person, and the amount of money so paid; and if he estopped from some men, he might have done it from the whole; and if he estopped for the benefit of Ricaud, he might have estopped for the benefit of the United States, of which he was an important and highly trusted officer. Major Clark also states, that the restoration of the money by the men must have been entirely voluntary. It is certain that Ricaud, being no longer Paymaster, had no power to coerce the return of money. It is certain that Major Clark, being paymaster, might have estopped it in his hands. From the whole tenor of the facts, and the peculiarity of the transaction, it is manifest that Ricaud, being too sick to attend to business; having been required to place money in his hands by his commander, for a public use; and that officer, though he applied the money to the intended use, having failed to make the entries of the payments on the muster rolls; Ricaud, or rather his only solvent surety, after an omission by the Government to make any effort to recover the same from him, when he might have had the advantage of testimony, now put beyond his reach by death, or other causes, is now to be made responsible for the omissions of Colonel Carbery and his adjutant.

It is believed to be a fact, and it is presumed, with a little trouble, it might be made to appear, that, after this transaction, Ricaud not only continued unable, from sickness, but was removed from his office as paymaster; and, therefore, had no official power to correct the omission of Col. Carbery or his adjutant, if it were possible to do it after the men had been paid, and the payments not noted on the muster rolls.

On this branch of the subject, it only remains to observe, that even if Ricaud had, when no longer paymaster, endeavored, and had actually received, a part or the whole of the money, paid by Col. Carbery to the men; this fraud, or attempted fraud, being committed after he had ceased to be paymaster, his sureties ought not to be responsible for the act, as their suretyship had expired at the time of his dismissal from office.

While he was paymaster, Col. Carbery, commanding the regiment, received, or rather forced from the sick paymaster, \$2,000; he actually paid this sum to the men on public account; in other words, the money was received for public use, and applied to public use. This is not denied by the accounting officers of the Department of War; and it is not on this account that they reject the credit claimed, but because the technical forms prescribed by the Department of War were not observed by Col. Carbery and his Adjutant; and because Ricaud, being sick, and removed from office, could not have this done;

and because Ricaud did not take a formal receipt from Col. Carbery, though his check on bank, paid at Bank, and the money applied to the use intended, would, in every case of an individual transaction, be regarded by a court and jury as equivalent to the most precise and particular receipt.

Here it may be observed, that, in numberless instances, Congress have relieved, where vouchers have been totally deficient; and lately, in case of a paymaster sending money to a distant post, and that money being lost by accident, this paymaster has been released. In the case of Ricaud, the money had been sent to Col. Carbery to pay his regiment; the money had been lost by two accidents, not in the scope of human probability—one by the omission of Col. Carbery to do his duty, which could not have been anticipated from the commander of the regiment, as it is always presumed that he will do his duty—namely, from the omission of Col. Carbery to have the payments made by him entered on the muster rolls; the other accident was, that Major Clark, when he knew these advances had been made, had, or might have had, the muster rolls of August, and could have estopped the money in his hands, but neglected to do it, because, forsooth, it was not his duty to deduct any payments which were not entered on the muster rolls. To be sure the money, in the first case, was lost by a natural accident, but which might have been avoided by the bearer of the money; and in the latter, by the combination of two moral accidents: to these might be added a natural accident—the extreme illness of Ricaud, which it appears continued from August to November, and probably to his death. During all these scenes, Major Lee was doing his duty; and at the last period, in Canada.

The power of Congress to appropriate, as laid down by the President, and as confirmed by practice, is co-extensive with the public interests and the claims of equity and justice. This application is made to the equity and justice of Congress, because the rigid forms of official regulations will not afford relief. And it might be asked, if the same rigor had been persevered in in a late memorable instance—the case of the Vice President—would that meritorious and magnanimous citizen have received the relief which has been afforded to him by a generous country.

And though the Congress may be justified in going further in this instance than in any other, yet it is hoped that, in other cases, equally hard, because the individuals are of minor consequence, and have not rendered such great services, they will not steel their bosoms against affording proper redress. Congress is the sovereign of the nation, and carries in its bosom all its equity and generosity, to be dispensed as peculiar cases may claim the exercise of these virtues.

It will only be added that this case is peculiarly hard, because a judgment has been obtained against the petitioner by default. He is not entirely free from blame in neglecting to inform himself of the court in which he was sued. But, being unskilled in the intricate forms of law, he mistook the court; perhaps the officer serving the writ did not explain it, and he omitted to read it himself. But so it

was, the United States obtained a judgment by default, in the District Court of Virginia: while he was prepared to defend himself in the Circuit Court. Perhaps the Congress, if they are disposed to afford no other redress, will be willing to set aside the judgment by default, and order a new suit and a new trial.

All which is respectfully submitted.

RICHARD BLAND LEE,
for Major **HENRY LEE.**

February 16, 1824.